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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,165	04/16/2004	David Carroll Challener	RPS920030239US2	2667
50/594 7590 03/04/2008 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487				
			EXAMINER	
			PARTHASARATHY, PRAMILA	
		ART UNIT	PAPER NUMBER	
		2136		
		MAIL DATE	DELIVERY MODE	
		03/04/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,165

Applicant(s)

CHALLENGER ET AL.

Examiner

PRAMILA PARTHASARATHY

Art Unit

2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. This action is in response to the communication filed on 12/26/2007. Claims 1 – 33 are currently pending.

Response to Arguments

2. Applicant's argument with respect to copending application 10/848,796 obviousness-type double patenting rejection is not persuasive. Examiner respectfully submits that as Claim 1 from each of the applications as an exemplary case:

"configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer; and receiving from the fix server the software fix, wherein the client computer communicates only with the fix server when a determination is made that the client computer has not previously received the software fix" still maps to "polling a **fix server** for an available software fix" and "**determining** whether the client has previously received the software fix; receiving the software fix from the server", the copending application claims encompass the instant application claims while the instant application claims are border in scope, the copending application is specific to how the software fix is carried out in the client . Applicant arguments are not persuasive.

3. Upon further consideration, Examiner withdraws the obviousness-type double patenting rejection with the Patent 6,526,507.
4. Regards Applicant's argument against prior art rejection, Examiner respectfully submits that: the cited portion teaches updating virus signature file and if virus is found, the user is alerted. Further, while the elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 USC 102 rejection. See MPEP 2131.01.

Examiner hereby withdraws the prior art rejection. Applicant's arguments with respect to claims 1 – 33 are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 – 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Kouznetsov et al. (US Patent 6,892,241).
6. As per Claims 1, 18, 26, 31 and 33, Kouznetsov teaches "configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer; and
receiving from the fix server the software fix, wherein the client computer communicates only with the fix server when a determination is made that the client computer has not previously received the software fix" (Column 2 lines 15 – 54), wherein "conditionally include a notice to the user .. such notice may include that the user is required to reinstall the antivirus scanning software. Further, the notice may indicate that the user is required to reactivate the anti-virus scanning software" and "Optionally, the updating of the anti-virus scanning software may include sending an update request to a server utilizing the network and receiving an update from the server". Furthermore, Kouznetsov teaches **server 114** coupled to a network 108, the server(s) 114 may include any type of computing device/groupware. Coupled to each server

114 is a plurality of **client computers 116**. A client agent 120 coupled to one of the client computers 117. The client computers 117 may also be equipped with a scanner 121 including anti-virus scanning software. Also provided is a database 122 that is coupled to an associated server (i.e., server 114). Such database 122 is equipped with virus signature updates that may be selectively distributed to the client computers 117 for updating the scanner 121.

The dependent claims are rejected at least by virtue of their dependency on the dependent claim.

7. As per Claims 6, 7, 10 and 30, Kouznetsov teaches "a fix detector which discerns an offer for a software fix from a fix server;

an isolator which is operatively coupled to said isolator and which transfers the software fix from the fix server, and

a boot strap which is operatively coupled to said downloader and which reboots the client computer after the software fix has been downloaded and executed; wherein the client computer is reconnected to a network without restrictions after the software fix is loaded and executed in the client computer" (Column 5 line 43 – Column 6 line 53).

8. As per Claims 2, 3, 5, 11, 12, 13, 15, 16, 17 and 19, Kouznetsov teaches "wherein the software fix is automatically forced on the client computer to be received and applied on the client computer without a user intervention" and "wherein the service processor includes an agent for detecting the offer for the software fix" (Column 2 line 65 – Column 3 line 8 and Column 6 lines 25 – 53).

9. As per Claim 4, Kouznetsov teaches "waking up the client computer with a Wake-On-LAN (WOL) signal, the WOL signal being included in a packet from the fix server, the packet from the fix server including the address of the fix server" (Column 6 lines 25 – 53).

10. As per Claim 8, Kouznetsov teaches "utilizing a service processor in the client computer to reconfigure a Network Interface Card (NIC) driver, wherein the NIC is configured to communicate only with the fix server to receive the software fix" (Column 5 line 43 – Column 6 line 53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 14, 20 – 30 and 31 – 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouznetsov (US Patent 6,892,241) as applied to claims 1 and 11 above, and further in view of Ho et al. (US Patent 7,188,369).

11. As per Claims 9 and 14, Kouznetsov teaches "determining whether the client computer has any of a virtual machine manager, a primary operating system, a secondary operating system, and a service processor, and upon said determination, utilizing the virtual machine manager to control the network interface if the client computer has a virtual machine manager, or else utilizing the service processor to control the network interface if the client computer has a service processor, or else utilizing the secondary operating system to control the network interface if the client computer has a secondary operating system, or else utilizing the primary operating system to control the network interface" (Column 4 line 5 – Column 5 line 51). Kouznetsov does not explicitly disclose a virtual machine manager which virtualizes the

hardware interface. However, Ho discloses "a virtual scanning processor having a plug-in functionalities having a plurality of internal instructions, a computer virus signature database **201** storing a plurality of computer virus signatures" and "The virtual scanning processor 101 is provided at the application program (AP) level 302. The antivirus scanning module can also be provided by other virtual machine at the AP level" (See Ho Column 5 line 25 – Column 6 line 22).

It would have been obvious to one of ordinary skill in the art to combining Kouznetsov with Ho because security and device independence (virtual machine) can run regardless of hardware and software underlying the system, the anti-virus program can be updated, the machine can be re-booted without any disadvantage to the computer/operating system.

12. As per Claims 20, 26 and 31 – 32, Kouznetsov teaches "configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer; and

receiving from the fix server the software fix, wherein the client computer communicates only with the fix server when a determination is made that the client computer has not previously received the software fix" (Column 2 lines 15 – 54), wherein "conditionally include a notice to the user .. such notice may include that the user is required to reinstall the antivirus scanning software. Further, the notice may indicate that the user is required to reactivate the anti-virus scanning software" and "Optionally, the updating of the anti-virus scanning software may include sending an update request to a server utilizing the network and receiving an update from the server". Furthermore, Kouznetsov teaches **server 114** coupled to a network 108, the server(s) 114 may include any type of computing device/groupware. Coupled to each server 114 is a plurality of **client computers 116**. A client agent 120 coupled to one of the client

computers 117. The client computers 117 may also be equipped with a scanner 121 including anti-virus scanning software. Also provided is a database 122 that is coupled to an associated server (i.e., server 114). Such database 122 is equipped with virus signature updates that may be selectively distributed to the client computers 117 for updating the scanner 121.

Kouznetsov does not explicitly disclose a virtual machine manager which virtualizes the hardware interface. However, Ho discloses "a virtual scanning processor having a plug-in functionalities having a plurality of internal instructions, a computer virus signature database **201** storing a plurality of computer virus signatures" and "The virtual scanning processor 101 is provided at the application program (AP) level 302. The antivirus scanning module can also be provided by other virtual machine at the AP level" (See Ho Column 5 line 25 – Column 6 line 22).

It would have been obvious to one of ordinary skill in the art to combining Kouznetsov with Ho because security and device independence (virtual machine) can run regardless of hardware and software underlying the system, the anti-virus program can be updated, the machine can be re-booted without any disadvantage to the computer/operating system.

The dependent claims are rejected at least by virtue of their dependency on the dependent claim.

13. As per Claims 21, 22, 23, 27, 28 and 32, Kouznetsov teaches "upon receiving the software fix from the fix server, executing the software fix directly from the virtual machine manager" (Column 2 line 65 – Column 3 line 8 and Column 6 lines 25 – 53).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO Form 892.

Applicant is urged to consider the references. However, the references should be evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. If applicants are aware of any better prior art than those are cited, they are required to bring the prior art to the attention of the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pramila Parthasarathy whose telephone number is 571-272-3866. The examiner can normally be reached on 8:00a.m. to 5:00p.m.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on 571-272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2136

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pramila Parthasarathy/
Examiner, Art Unit 2136
February 24, 2008